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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Diane Constance McCluskey

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Law Office of Mark R. Lee

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 05/03/2006

15h

Please find below and/or attached an Office communication concerning this application or proceeding.

12h

Office Action Summary	Application No. 10/734,436	Applicant(s) MCCLUSKEY, DIANE CONSTANCE	
	Examiner Victor K. Hwang	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The full name of each inventor (family name and at least one given name together with any initial) has not been set forth.

The printed family surname ("Lee") does not match the signed family surname ("McCluskey"). See page 2 of the Declaration.

Specification

2. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. See paragraphs [0006], [0007] and [0008]. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.
3. The use of the trademark "Velcro" has been noted in this application. See paragraph [0023]. It should be capitalized wherever it appears **and be accompanied by the generic terminology**.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informalities: the last portion of paragraph [0030] is not complete because it was originally filed on a page that included the claims. In replacing the claims on a separate sheet, the last portion of the last paragraph was not included as a part of the specification. Please submit a complete paragraph [0030] in the next response.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2 and 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by *VandenBerg* (US Pat. 6,665,879 B2). *VandenBerg* discloses a weighted collar comprising an upper layer and a lower layer joined peripherally at 40 to form a body 20. The body may comprise three panels or a single panel (col. 3, lines 20-29). The body 20 has a central aperture 34 and an outer periphery 40. The interior of the body is filled with a plurality of weights 44 that are constrained from movement by a plurality of segments 36 in the body. The weights may comprise dense metal discs, dense gel, or metal shot (col. 3, line 49 to col. 4, line 4). The weighted collar may be releasably affixed to a vest 46 or form a part of vest 46.

A slit extends from the aperture for the neck 34 to the outer periphery to create two edges (see Fig. 3 showing edges adjacent one another over the chest of the user). The distal corners of the body panels are considered by the Examiner to read upon the claimed limitation of one or more radial extensions, since the claims do not define the exact shape of the outer periphery of the collar and what can be considered a radial extension. Additionally, the back edge of the rear panel may extend longer or shorter than shown (col. 4, lines 23-25). This extension would also be considered a radial extension.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by *Williams et al.* (US Pat. 6,149,557). *Williams et al.* discloses a weighted collar in several embodiments. The embodiments shown in Figs. 6A, 6B, 6C, 6D and 6E comprise an upper and a lower surface joined peripherally to form a body having a central aperture 240 and an outer periphery. The body is filled with weight or ballast, such as sand, steel shot, or lead shot (col. 4, lines 25-26 and col. 6, lines 4-11). Seams 200 can be provided to direct distribution of the ballast weight.

The embodiments shown in Figs. 6B, 6C and 6E include extensions 230 that are radially oriented relative to the central aperture 240. The extensions 230 are pockets that may be used to hold additional weights. The embodiment shown in Fig. 6D further comprises a slit creating two edges extending from the central aperture to the outer periphery.

8. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by *Lipton* (US Pat. 4,891,501). *Lipton* discloses a weighted collar comprising a body having a central aperture 10 and an outer periphery 28. The body is formed by upper and lower surfaces joined peripherally.

The body is filled with a plurality of weights that may comprise wet sand (col. 3, lines 29-31 and col. 4, lines 58-59), or ammonium nitrate pellets and sealed bags of water (col. 5, lines 25-27).

The sand, pellets, and bags of water are considered to read upon the claim limitation of a plurality of weights, since each sand grain, pellet, or bag of water constitutes a weight. A weight is something having mass. Partitions 304 or 306 may be provided to constrain the movement of the weights.

The collar can be applied around the neck and on top of the shoulders of a user as shown in Figs. 5-8. Two edges of the collar create a slit as shown in Figs. 6 and 7, and are secured together by a fastener¹⁴. The distal corners of the collar are considered by the Examiner to read upon the claimed limitation of one or more radial extensions, since the claims do not define the exact shape of the outer periphery of the collar and what can be considered a radial extension.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Levinson (US Pat. 1,253,260), *Bushnell* (US Pat. 3,233,248), *Castellani* (US Pat. 3,500,472), *Gracie* (US Pat. 4,407,497), *Conrad Daoud et al.* (US Pat. 5,144,694), *Davis et al.* (US Pat. 6,123,717), *Dereszynski* (US Pat. 6,224,517), *Mercuri et al.* (US Pat. Pub. 2004/0072660 A1), *Cheatham* (US Pat. 6,926,686 B2), *Dussaussoy* (US Pat. Pub. 2006/0047229 A1) and *Dussaussoy* (US Pat. Pub. 2006/0047233 A1) disclose devices that may be considered weighted collars or have features that read upon the claimed limitations.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
April 28, 2006